Supreme Court, U.S.
FILED
FEB 28 2000
OFFICE OF THE CLERK

No. 991654

In The Supreme Court of the United States

JAMES RUFUS WOODS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

PETITION FOR WRIT OF CERTIORARI

H. Davis North, III
Counsel of Record
HARRISON, NORTH, COOKE & LANDRETH
221 Commerce Place
Post Office Box 520
Greensboro, North Carolina 27402
(336) 275-1231

Counsel for Petitioner

LANTAGNE LEGAL PRINTING
801 East Main Street Suite 100 Richmond, Virginia 23219 (800) 847-0477

69 pp

QUESTION PRESENTED

I. Did the trial court err in denying the defendants' motion to suppress in that the arrest of the defedant and subsequent seizure of contraband was within probable cause?

PARTIES TO THE PROCEEDING

James Rufus Woods, Petitioner

United States of America, Respondent

TABLE OF CONTENTS

QUESTIONS PRESENTED..... i

PARTIES TO THE PROCEEDING..... ii

TABLE OF CONTENTS..... 1

TABLE OF AUTHORITIES..... 2

STATEMENT OF JURISDICTION..... 3

CONSTITUTIONAL PROVISION INVOLVED..... 4

STANDARDS OF REVIEW..... 5

STATEMENT OF THE CASE..... 6-7

STATEMENT OF THE FACTS..... 8-11

SUMMARY OF ARGUMENT..... 11-12

ARGUMENT..... 12-20

CONCLUSION..... 20-21

TABLE OF AUTHORITIES

Cases

Alabama v. White, 496 U.S. 325, 110 S.Ct. 2412, 110 L.Ed.2d at 301 (1990).....13

Draper v. United States, 358 U.S. 307, 79 S.Ct. 329, 3 L.Ed.2d 327.....13

Florida v. Royer, 460 U.S. 491, 103 S.Ct. 1319, 75 L.Ed.2d 229.....12

Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.3d at 889.....13

United States v. Campbell, 920 F.2d 793 (11th Cir. 1991).....18

United States v. Kolodziej, 712 F.2d 975 (5th Cir. 1983).....16

United States v. Rusher, 966 F.2d 868, 873 (4th Cir. 1992)..... 5

Constitutional Provisions

Constitution of the United States,
Amendment IV.....

STATEMENT OF JURISDICTION

The jurisdiction of the Supreme Court of the United States is invoked pursuant to the provisions of 28 U.S.C. § 1254 (1). Review is sought of the unpublished opinion of the United States Court of Appeals for the Circuit in United States of America v. James Rufus Woods, No. 98-4888, decided on November 29, 1999.

CONSTITUTIONAL PROVISIONS

The Fourth Amendment of the United States Constitution provides: The right of the people to be secure in their person, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated.

STANDARDS OF REVIEW

This Court reviews the factual findings underlying the legal conclusions under the clearly erroneous standard and reviews the legal conclusions of the district court regarding a suppression determination de novo. See United States v. Rusher, 966 F.2d 868, 873 (4th Cir. 1992).

STATEMENT OF THE CASE

The Appellant was originally arrested on January 12, 1998. Following this arrest, the Appellant was indicted by a Grand Jury sitting in the Middle District of North Carolina on April 27, 1998. (App.7) This indictment charged the Appellant with one count of possession with intent to distribute in excess of 50 grams of cocaine base, in violation of 21 U.S.C. § 841. Id.

On June 18, 1998 counsel for the Appellant filed a motion to suppress the search of the Appellant's car (App.8). This motion to suppress was denied on July 6, 1998. (App.55) However, the Government did agree to not use any evidence seized in the search of the Appellant's house.

During the time which the motion to suppress was pending, the government filed a Notice of Information of prior convictions pursuant to 21 U.S.C. § 851. This Notice of Information sought to apply the enhanced statutory

minimum penalty of life imprisonment based upon the Appellant's prior convictions.

On July 29, 1998 the Appellant filed a second motion to suppress. (App.9) This motion sought to suppress statements made by the Appellant while he was in the custody of the arresting officers. This motion was granted and the Appellant proceeded to trial by jury on August 12, 1998. The petit jury returned a verdict of guilty on August 13, 1998. (App.71).

After a sentencing hearing on November 23, 1998, appellant was sentenced to life in prison. The Fourth Circuit Court of Appeals, in its opinion of November 29, 1999, chose to reject the Defendant's argument that his arrest and the search that took place in connection therewith, was unconstitutional. This Petition for Writ of Certiorari is presented specifically to request a review of the propriety of that decision.

STATEMENT OF FACTS

Sheriff's deputies in Caswell County , N.C. suspected that the appellant, James Rufus Woods, who had been convicted of two previous drug offenses was still involved in drug trafficking. (App. 22-24). Late in 1998, they charged a man named Richardson (hereinafter, "the informant") with felony drug offenses. The informant named the appellant as his primary source of cocaine, and claimed to have established a two year pattern of calling Woods for delivery of ounces amounts, on a random basis. None of that activity was corroborated. According to the informant, after a call, Woods would meet him at random points on highway 119 north, or at the informant's house and an exchange would take place. Woods supposedly utilized a number of different vehicles for his deliveries. One of these was a "maroon to purple" van. (App. 19-22).

About one month after the informant made his claim

about Woods, Deputy Kirby of the Caswell Sheriff's Department devised a plan to apprehend Woods by directing the informant to arrange a transaction along the lines of his previous as described activity. (App. 25-29).

Woods lived at the end of a wooded driveway that exited on highway 119 north. Kirby positioned a surveillance team at the junction of the driveway and the highway; a chase car was placed further north on 119 about a half mile down the road. (App. 28-29). Kirby called the informant at 9:25 am, and told him to make a call to Woods. The informant returned the call about three minutes later. He said that Woods was then in route to the informant's house with three ounces of cocaine. (App.27-29). He did not indicate the basis of that conclusion. Shortly thereafter, a maroon van emerged from the driveway, and turned north on highway 119. None of the surveilling officers knew what Woods looked like. The only physical description in their possession was that he was a

"large framed" black male. No one made a positive identification of the driver before the vehicle was stopped. (App. 44-45). The vehicle was stopped by officers because it was a maroon van coming from the driveway to the Woods residence. (App. 51). The informant did not say whether drugs were stored at Woods residence or in the vehicle. (App. 40-41). None of the surveillance party knew whether or not more than one black male lived in the same residence as Woods. (App. 44, 50-51).

As the maroon van approached that area of the police road block, it turned off the road and into a private drive; at this time, deputies blue-lighted the vehicle and brought it to a stop about 100 yards from the road block. (App. 48).

Several officers immediately surrounded Woods; officer Kirby had his gun drawn, and one of the others had a canine on a short leash near the defendant, who was spread-eagled against his vehicle. Kirby took his wallet from his

pocket and began to question him concerning the whereabouts of the drugs. The officers admittedly intended to indicate to Woods that he was not free to leave at that point. (App. 39-42). Woods then indicated the location of the contraband. (App. 32). This statement was suppressed by the trial court. (App. 70)., On the theory that Woods was in custody requiring the administration of Miranda warning. (App. 70).

SUMMARY OF ARGUMENT

All of the information concerning alleged criminal activities in possession of the arresting officers was supplied by an individual whose reliability was untested. That information was skeletal, lacking in detail. The police were not advised of the basis upon which the informant's conclusion that Woods was presently in possession of drugs was made. The police arrested the appellant before any corroboration of the informants' conclusion could be made,

at least to a degree sufficient to provide probable cause for an arrest or search. The police conduct involving Woods constituted a full scale arrest, not a temporary detention.

The seizure of contraband in this case was incident to an unconstitutional arrest. The arrest was unconstitutional because it was not supported by probable cause.

ARGUMENT

The law enforcement action of which James Woods was the subject on the morning of January 12, 1998, constituted the functional equivalent of a formal arrest. Immediately after his vehicle was stopped, the defendant was surrounded by several deputy sheriff's, brandishing weapons. Woods was forced to place his hands on a car roof, spread his legs, and give up the keys to his car. Any reasonable man would have understood that his freedom of movement had been indefinitely eliminated. See, e. g. Florida v. Royer, 460 U.S. 491, 103 S.Ct. 1319, 75 L.Ed.2d 229. In fact, that was

the intention of the arresting officers. (App.39-42) In short, Woods was placed under arrest prior to the discovery of the contraband in question. The arresting officer discovered the exact location of the cocaine only after questioning the appellant, whose responses to those queries were suppressed by the trial court judge, after finding that Woods made the statements while in custody, under circumstances that should have called for the giving of a Miranda warning. (App.70). Therefore, this is not a case wherein the government can rely upon the more relaxed standard announced by Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.3d at 889, and more specifically by Alabama v. White, 496 U.S. 325, 110 S.Ct. 2412, 110 L.Ed.2d at 301 (1990). When an arrest is effected, or a full blown search or seizure is conducted, "reasonable suspicion" does not suffice. The police must be in possession of probable cause, a concept whose heights are not scaled herein.

The judge who denied defendant's motion to suppress considered Draper v. United States, 358 U.S. 307, 79 S.Ct. 329, 3 L.Ed.2d 327, to be controlling in our case. (App.52) Such reliance is erroneous. In Draper, the informant had been employed as a paid informant on a regular basis for a period of 6 months prior to giving his information concerning Mr. Draper, and had always been shown to be reliable. Furthermore, the information he supplied was highly detailed:

> Draper had gone to Chicago the day before by train and was going to bring back three ounces of heroin and that he would return to Denver either on the morning of the 8th of September or the morning of the 9th of September also by train. [The informant] also gave Marsh a detailed physical description of Draper and the clothing he was wearing and said that he would be carrying a "tan zipper by bag" and that he habitually "walked real fast". Id, at 308.

On September 9th, a man arrived at the Denver train station who satisfied the prediction to the last detail. Not surprisingly, the agents arrested him , and the this Court upheld the subsequent search as being made incident to a lawful arrest.

In the instant case, an informant of untested reliability offered a single, conclusory statement, to wit: a black male named James Rufus Woods would be leaving his driveway within a few moments, intending to engage in a drug transaction with the informant, at some time in the future. The informant had previously given the police a list of several vehicles claimed to have been operated by the defendant in earlier transactions.

The information failed to indicate whether or not Woods was presently in possession of any contraband. No information indicated that anyone had been in the Woods residence within any relevant time; obviously, therefore, no

probable cause existed to provide a basis for the conclusion that drugs were either in the house, the vehicle, or on Woods' person, at the time of his arrest.

These facts, of course, significantly distinguish Draper, whose informant had been found reliable on numerous occasions over a lengthy time period, and whose information contained specific details concerning travel plans, mode of travel, clothing worn by the suspect, physical idiosyncrasies of the subject, and, most crucially, a positive assertion that the individual under surveillance would be in possession of contraband. In our case, no one made that claim. This makes our facts more like those extant in U.S. v. Kolodziej, 712 F.2d 975 (5th Cir. 1983). There, information was provided by recently arrested co-conspirators of the defendant that he had been their supplier for the past year. One of them made the statement that Kolodziej kept drug money in his car. The Fifth Circuit responded as follows; at

977:

> Like the district court, we read this tip as providing nothing more than conclusion that the defendant had engaged in, and was engaging in criminal conduct. No basis of knowledge is set forth, no specific fact or circumstances which would indicate how Mitchell came to know where the money was kept, or that it was earned in illicit drug transactions. It is also silent on the narcotics themselves: Did the informant know that the defendant kept marijuana and quaaludes in his house, and where in the residence he kept them? If so, how?

Similarly, information herein, communicated to the police by the untested informant was that a deal had been struck; but the logistics of the deal, that is, its timing, and the present ability of the defendant to consummate it, were left to speculation. The officers didn't know how many black males resided at the house in question; they never observed the house, or the person who got in the vehicle ultimately subjected to a stop. The occupant, whoever he was, might have been in possession of drugs or might have been on his way to pick them up; on the other hand, he might have been

on a trip to the grocery store, or to visit a friend; or he might have been engaged in a myriad of innocent endeavors. The officers chose to set up a road block before the defendant could have passed several roads which would have provided a route that, if taken , would have indicated that the driver was not headed to the informant's residence.

At most, officers faced with this existential situation might argue that they were in possession of "reasonable suspicion" which might entitle them to conduct a temporary detention of the vehicle in question to conduct a brief interrogation of the driver while examining the interior for "plain view" evidence. See , e. g. , U.S. v. Campbell, 920 F.2d 793 (11th Cir. 1991). There, officers were advised that a Mexican woman would be bringing marijuana to Birmingham, Ala., within a discreet period of about 90 minutes. A detailed description of the vehicle, with license tag information, was included. At the predicted time, a truck fitting the exact

description arrived at the predicted destination. The vehicle was surrounded, and its occupants were ordered out and placed under arrest. A later, intensive search turned up the marijuana. The Court ruled that probable cause did not exist to support a full scale arrest of the occupants, noting that "at most" grounds for a temporary detention were demonstrated. Id., at 797. Appellant suggests that the holding in Campbell should control this case.

In short, the informant herein was not shown to be reliable; his information was skeletal and conclusive; and, no corroboration of salient facts was accomplished by the authorities. The arrest was constitutionally premature, and the fruits of this invalid seizure should have been suppressed.

Finally, it must be noted that the Constitutional shortcomings exhibited by the actions of the deputies in this case could have been eliminated with little or no extra effort: an officer could have consensually monitored the alleged

conversation between the untested informant and the appellant; At the very least, further inquiry could have been conducted to determine the basis for the conclusion that Woods was in possession of contraband at the time of his seizure. Surveillance could have been conducted of the area surrounding the residence, to determine the identity of the operator of the vehicle, and to make certain that the individual actually left from the residence of James Woods; and, finally, the officers could have planned for the arrest to take place at the time of the consummation of the predicted transaction, when the true destination and purpose of the appellant's trip would have been made clear. Instead, the path of action chosen depended upon luck and violation of the Constitution for its success.

CONCLUSION

For the above recited reasons, counsel submits that the order of trial court denying the appellant's motion to

suppress should be reversed.

Respectfully submitted this the ____ day of September, 1999.

H. Davis North, III

OF COUNSEL

HARRISON, NORTH, COOKE & LANDRETH
221 Commerce Place
PO Box 520
Greensboro, NC 27402
Telephone: (336) 275-1231
NCSB# 1939

APPENDIX A

COURT OF APPEALS
FOR THE
FOURTH CIRCUIT

OPINION
FILED, NOVEMBER 18, 1999

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v. No. 98-4888

JAMES RUFUS WOODS,
Defendant-Appellant.

Appeal from the United States District Court
for he Middle District of North Carolina, at Greensboro
William L. Osteen, District Judge.
(CR-98-117)

Submitted: November 18, 1999

Decided: November 29, 1999

Before WILKINS, HAMILTON, and LUTTIG, Circuit Judges.

Affirmed by unpublished per curiam opinion.

COUNSEL

A. Wayne Harrison, Sr., HARRISON, NORTH, COOKE & LANDRETH, Greensboro, North Carolina, for Appellant.

Walter C. Holton, Jr., United States Attorney, Lisa B. Boggs, Assistant United States Attorney, Greensboro, North Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

OPINION

PER CURIAM:

James Rufus Woods appeals his conviction for possession with intent to distribute crack in violation of 21 U.S.C. § 841 (a) (1) (1994). Woods was sentenced to a term of life imprisonment followed by ten years of supervised release. On appeal, Woods contends that the district court erred in declining to suppress evidence seized during a search incident to his arrest. Woods argues that the evidence should have been suppressed because probable cause did not exist to support his arrest. Based upon the materials before the court, we affirm.

Probable cause exists to support a warrantless arrest when "the facts and circumstances within the arresting officer's knowledge are sufficient for a reasonable person to believe that a crime has been or is being committed by the person to be arrested." *United States v. Miller*, 925 F.2d 695, 698 (4th Cir. 1991). In assessing the existence of probable cause, district courts examine the totality of the circumstances known to the officers at the time of the arrest. *See Illinois v. Gates*, 462 U.S. 213, 232 (1983). We review for clear error the court's factual determinations made at a suppression hearing, while the court's legal conclusions are reviewed de novo. *See United States v. Han*, 74 F.3d 537, 540 (4th Cir. 1996).

The testimony at the suppression hearing revealed the following facts as found by the district court. Law enforcement officers received information that Woods was dealing crack and that he had two prior drug convictions. An informant, who never gave false information, disclosed to the

officers that Woods was his main supplier of crack and that it was his practice to meet Woods at various locations along North Carolina Highway 119 to purchase crack from him. The informant also told the officers that Woods drove many vehicles, one of which was a large maroon or purple van. The officers were aware that Woods was a large African-American male and that he resided at a particular residence along Highway 119. In cooperation with the law enforcement officers, the informant called Woods at his residence and arranged a drug purchase on Highway 119 near Woods' home. The officers organized a road-block and other surveillance between Woods' home and the place where the informant and Woods had arranged to meet.

Within minutes of being notified that the informant had contacted Woods and that Woods would be en route with three ounces of crack, law enforcement officers spotted a maroon van leaving Woods' driveway, being driven by an African-American male and traveling in the direction of the road-block and only a couple of miles from Woods' residence, it turned off the Highway into a private drive. The officer then stopped the vehicle and arrested Woods. Contemporaneous to Woods' arrest, officers seized three small packages of crack in a large paper bag placed in between the two front seats.

We conclude that sufficient probable cause existed to support Woods' arrest and thus the district court did not err in denying Woods' motion to suppress evidence. Accordingly, we affirm Woods' conviction. We dispense with oral argument because the facts and legal contentions are adequately set forth in the materials before the court and arguments would not aid the decisional process.

AFFIRMED

APPENDIX B

EXCERPTS FROM HEARING
ON MOTION TO SUPPRESS
UNITED STATES MIDDLE DISTRICT OF NORTH CAROLINA
JULY 6, 1998

PAGINATION IN ACCORDANCE
WITH CITATIONS, STATEMENT OF THE FACTS,
AND ARGUMENT IN DEFENDANT'S PETITION

DIRECT EXAMINATION

Q. BY MR. FOLMER: If you would please state your name?

A. My name is Tony Kirby.

Q. How are you employed?

A. Detective with the Caswell County Sheriff's Department, narcotics division.

Q. Where is your office located?

A. Yanceyville, North Carolina.

THE COURT: Tell me your last name again.

THE WITNESS: Kirby.

Q. BY MR. FOLMAR: How long have you been with the Caswell County Sheriff's Department?

A. Approximately nine years.

Q. With that department, tell us what you do.

A. My role as a criminal narcotics investigator would included processing of information, taking that information and following up investigating the actual complaint, and usually that's in the form of narcotics

violations, dealing with informants, conducting controlled buys, going in an undercover capacity as far as purchasing narcotics myself with various other agencies, and, based upon all of the above, pursuing or the eventual arrest or processing of individuals for violations of the North Carolina Controlled Substance Act.

Q. Out of you nine years with the Sheriff's Department, how many have been spent with the narcotics unit?

A. Approximately the past five, going on six.

Q. Did you have any law enforcement experience prior to the Sheriff's Department?

A. Yes, sir, I did. I worked four years military police with the Unite States Army.

Q. Directing your attention to this particular case, did you have an opportunity to cultivate an informant?

A. Yes, I did.

Q. Would you tell the Court how it was you came to

know this particular informant, and, if you can, mane him and just tell us what happened with regard to that.

A. Halifax County Sheriff's Department sergeant Richard Pulliam contacted me in reference to an individual that lived in our county by the name of Tony Delrico (phonetic) Richmond. Mr. Richmond had been targeted by the Halifax County Sheriff's Department as a distributor of cocaine in the Halifax County Virginia area.

Pursuant to their investigation, they had set up a buy/bust type situation in Virginia on Highway 58. We were invited to participate with that particular search, particular buy/bust, and which we did. Pursuant to the arrest and eventual seizure of controlled substances in the possession Mr. Richmond, search warrants were obtained based on surveillance from his residence to the bust location.

Q. And he lived where?

A. In Caswell County on Highway 57. Based upon that information, search warrants were obtained for his residence where six additional grams of crack cocaine were located in his residence. He was contacted by the Commonwealth Attorney's Office as well as our District Attorney's Office and myself sergeant Richard Pulliam of the Halifax County Sheriff's Department in reference to helping himself with his charges and at which point he named Mr. Rufus Woods, James Rufus Woods as his main supplier of cocaine that he had possessed on that date as well as cocaine that he had possessed on earlier dates.

Q. What happened with Mr. Richmond's case?

A. His case is still pending in Virginia, based on his activity in North Carolina his charges have been dismissed.

Q. And did you personally have an opportunity to

interview Mr. Richmond about the defendant in this case?

A. Yes, I did.

Q. And tell us what Mr. Richmond told you about this defendant.

A. Mr. Richmond states that he had been doing business with Mr. Woods over a two-year period or longer, and that during his transactions with Mr. Richmond, that he would normally purchase no less than one ounce of cocaine, sometimes two, that the cocaine would cost him between a thousand to $1,200, and that usually all he would have to do would be to call Mr. Richmond at his residence and Mr. Richmond would then advise whether he had it or not.

Q. Who would make the call?

A. Mr. Richmond would call Mr. Woods.

Q. Okay.

A. I'm sorry. And at that point Mr. Woods would

confirm whether he had it or not. And the normal situation would be that Mr. Woods would proceed out of his residence, oh, from his residence, down to 119 north area in the direction of Mr. Richmond's residence, and they would meet on the road they would stop both sides of the road and conduct the exchange of narcotics at that point. He also provided a description of vehicles that he would use on these various deals. He listed several vehicles that Mr. Richmond would use.

Q What were some of the vehicle?

A — that Mr. Woods would use. He indicated a red Mustang, a purple in color Mustang, a red Chevrolet truck, a maroon ro purple colored van, also a Honda Gold Wing motorcycle.

Q Okay, I believe you indicated that Mr. Richmond said he had been doing business with the defendant for approximately two years.

A. Two years or over.

Q. And did he tell you what "doing business" was?

A. Yes, sir.

Q. What was that?

A. Purchasing at a minium of ounces of cocaine per transaction.

Q. Did he indicate what form this cocaine was in that he was duying from the defendant?

A. Yes, he did. Crack cocaine.

Q. Now, did you have any previous knowledge about the defendant, Mr. Woods?

A. Yes —

Q. At that time you got this information.

A. Yes, I did.

Q. What was that?

A. Ever since I've been in narcotics the name of Mr. Woods has been co-existent with the name of another individual that was the focus of an investigation by the

name of Ira Edwards Jones as well as Gloria Medlin and Bessie Scott Key, Terry Eugene Woods. Basically those are the primary characters s well as some individuals in Virginia. In 1992 the investigation revealed that this was a conspiracy or our contention was, based on what we —

MR. HARRISON: Object, Your Honor, with regard to relevance in terms of this particular --

THE COURT: Well, he's talking about what information he had at this time. Wouldn't that enter into a probable cause determination, whatever information he had both from the informant and from other sources?

MR. HARRISON: All right, sir.

Q. BY MR. FOLMER: You may proceed.

THE COURT: Surely.

THE WITNESS: The information would — the information was that this was an organization with

Mr. Edwards Ira Jones as the head of the operation, that Mr. James Rufus Woods, the defendant, and his brother, Sammy Woods, were the main runners of the operation and handled the majority of the dope. Surveillance was conducted by agents of the ATF in the form of Bill Queen and also agents from the Alamance County Sheriff's Department, Ron Florence in particular, that criminal activity was observed involving Mr. Woods and the possible possession of a kilo of cocaine at one point. There was also information coming in in the form of citizen complaints as well as store owners int eh community calling in in reference to drug activity by Mr. Woods.

Q. BY MR. FOLMER: Okay. Did you make an effort to find out about the defendant's criminal history, whether or not he had actually ever been arrested or convicted of drug offenses?

A. Yes, I did.

Q. What did you find out?

A. That he had least two prior cocaine convictions to my recollection. I don't have his criminal history here in front of me, but I do recall two prior cocaine convictions, one for trafficking and one for possession with intent.

q. Okay. Let me ask you a little bit about your investigation with regard to this case, then. Did you know where the defendant lived?

A. Yes, sir, I did.

Q. If you would, describe that area for the Court.

A. Your Honor, this is a very rural area. 119 is a two-lane road running north and south intersecting with Highway 158 east and Highway 57. It's approximately ten miles from the Virginia state line. The location of the residence that Mr. Woods was staying was approximately two miles from a bridge over Hyco Lake, which is the only lake we have in

our county. Very little traffic on this road other than on Saturdays, late Friday afternoons, based on traffic going to the lake. And that would be confined to the summertime or late springtime.

Q. How recently were you in this area?

A. I was there yesterday, as a matter of fact.

Q. And were you there last Thursday in review of this case?

A. I was.

Q. Do you recall whether while you spent some -- how much time did you spend in the area on Thursday?

A. On Thursday, approximately 20 to 30 minutes.

Q. What were you doing there?

A. I was transporting yourself and Agent Stupar to the area through there to familiarize you with the location that we were targeting on this particular case and on the date in question.

Q. Do you recall how many other cars or how much

traffic that you saw in the area of the defendant's driveway and 119 while we were in that area?

A. I recall one vehicle passing us.

THE COURT: You're not about to make yourself a witness in this, are you, Mr. Folmar?

MR. FOLMAR: No, Your Honor.

Q. BY MR. FOLMAR: Do you recall what you saw?

A. Yes, sir, just one vehicle.

Q. Now, tell us what happened with regard to this particular case. Did you have contact with Mr. Richmond that led up to these events?

A. Yes, sir, I did. We had made contact with Mr. Richmond on at least two different occasions prior to this and were attempting to schedule a date to make the telephone call to Mr. Woods. Based on the information that Mr. Richmond had supplied, we went ahead and targeted a Monday morning for the actual call to be made. At approximately 7 a.m. I conducted

a briefing at the Sheriff's Department with --

THE COURT: What date was this?

THE WITNESS: This was on January 12th, 1998. I conducted a briefing in the Caswell County Sheriff's Department briefing room with Lieutenant Keith McKinney, Detective A. G. Brandon, Corporal Scott Holbrook, Officers Greenstock and Nickerson in reference to the target location, the target possible vehicle, descriptions of vehicles that this individual possessed, and I gave them my itinerary of events that we would attempt to make happen.

I contacted the individuals at the briefing at approximately 7 a.m. At approximately 7:35, after the briefing had taken place, Detective Brandon was directed to take Officer Greenstock and Officer Nickerson to the area of the suspect's residence and insert them into the wood line in camouflage clothing to conduct surveillance of traffic in and out of the

residence. They were put in place at approximately 7:35. At that point other units stayed at the Sheriff's Department until confirmation was received that they were definitely inside the wood line and had gotten to a vantage point location to observe traffic in and out of the residence.

At approximately 9 a.m., Detective Brandon, myself, Lieutenant McKinney and also Corporal Holbrook went to a location at the intersection of Long's Mill Road and Steven Town (phonetic) Road, which intersects above Highway 119 and had a view of 119. Detective Brandon was then instructed to go to a location just beyond the Hyco Lake bridge and the vantage point location of the two individuals, being Officer Nickerson and officer Greenstock, to observe any vehicle traffic coming down the roadway and also to identify the vehicle coming from Mr. Woods' residence, if in fact it did come from the residence.

At approximately 9:25 a.m. I contacted the informant, Mr. Richmond, and advised to go ahead and make the call as we had discUssed earlier in reference to the order of the cocaine. And I advised him at that point to order one ounce, at least one ounce, of crack cocaine. At approximately 9:25 a.m. the informant called me back on my cell phone and advised me that he had indeed had a conversation with James Rufus Woods and indicated that Mr. Woods would be en route and that his direction of travel would be North Carolina Highway 119 north in the direction of the Semora area, and that he would be in possession of three ounces of cocaine.

Q. Did the informant indicate to you that he had made this call to the defendant?

A. He did.

Q. And did he indicate to you where the defendant would be coming from?

A. He had already pointed out the residence of the defendant and was familiar with the residence to the point that he gave a description of it prior to going out and pointing it out.

Q. Did he indicate to you what vehicle the defendant would be in other than the descriptions of vehicles previously?

A. He did not indicate which vehicle he would be in on this date. We referred to prior descriptions at the briefing of what potential vehicles he would use based on the informant's statement that he used different vehicles on every delivery just about.

Q. And did the informant indicate where it would be that the defendant would be traveling to meet him?

A. That he would travel 119 north and that the meeting location would be on the roadway. If he didn't meet him on the roadway, he would come to his house.

Q. And if I could back up just one second. Where exactly

did you have Deputy Nickerson and Deputy Greenstock, who had been placed in the woods, where exactly were they located?

A. They were directly across the state highway from the private driveway leading to the defendant's residence.

Q. Okay. Once the informant indicated he had had this conversation with the defendant, what did you do then?

A. Once he advised me that he had made contact with the defendant, at approximately 9:31 or, correction, 9:30, I contacted the surveillance team including the wood line surveillance team and Detective Brandon on the radio utilizing our private channel and advised them that the call had been made, that the defendant would be -- should be en route. At that point, with the knowledge that the phone call had been made and that the defendant would possibly be en route, we set up a roadblock on the Hyco Lake bridge. And Detective

Brandon from his vantage point had been contacted by the surveillance team advising that the purple van matching the description of one of the vehicles provided was actually coming from the residence with one black male occupant fitting the description of the suspect driving 119 north.

Detective Brandon picked up the vehicle. No vehicles proceeded or followed this particular vehicle from the point the surveillance team encountered the vehicle until Detective Brandon got behind the vehicle. The vehicle approached the checkpoint location. Detective Brandon called the tag in -- or the roadblock location. Detective Brandon was calling the tag in. As the vehicle approached the checkpoint or the roadblock location, we had anticipated that there was only one ulterior (sic) route for the individual to take if he decided to take evasive action, and that was the private drive of a lake house sitting right on the lake

with a gate across it. The roadblock was set up approximately 100 yards from that location. And, in fact, when the vehicle later determined to be operated by Mr. Holbrook, approached the location of the stop. Detective Brandon had ordered Mr. Woods to the rear of the vehicle with the aid of his canine. At that point he was giving instructions to Mr. Woods. I went up to Mr. Woods and kicked his feet apart, placed him against the vehicle, retrieved his wallet to confirm I.D. At that point I instructed Mr. Woods as to why he had been stopped based upon the information, ongoing information, in regard to him. And I asked him if he had anything in the vehicle that we should know about. At that point he advised he had some cocaine in a brown paper bag between the front seats.

Q. You said when you initially approached the defendant at the side of the car, you obtained his I.D. to verify who he was?

A. I did.

Q. What were the results of that?

A. That it was James Rufus Woods, and that was based upon a North Carolina driver's license.

Q. When you, thereafter, obtained the brown paper bag, what appeared to be in it?

A. Actually Detective Brandon went to the vehicle and retrieved the paper bag, and he opened it and exposed at that point three individually wrapped cellophane old sandwich bag containers with a hard rock-like substance consistent with my training and experience to be crack cocaine.

A. Yes, sir, it is.

Q. And is one of those purposes to arrest or apprehend someone who is suspected of a crime?

A. Yes, sir.

Q. And did you have an opportunity to observe Mr. Brandon using the canine in that fashion on this

occasion?

A. Detective Brandon had his canine out of the vehicle. The canine was in the sitting position when I observed him. And he was also on a short leash.

Q. Okay. Immediately adjacent to Mr. Woods?

A. To the rear of Mr. Woods approximately ten foot.

Q. And what position was Mr. Woods in at the time you got to his immediate presence?

A. He was being instructed to place his hands on top of the vehicle and spread his feet apart.

Q. All right. And did any of the officers have their guns out at this time?

A. I recall having mine drawn but at waist level pointed toward the ground and holstered mine upon approaching Mr. Woods. I don't recall if officer Brandon had his out or not. That would be the two officers I had directly in my focal point.

Q. All right. Now, had Mr. Woods gotten as far as your

roadblock, it was your intention to stop him at that point, was

it not?

A. Yes, sir, it was.

Q. And he was gotten out of the automobile and placed up against the car, is that correct, by Mr. Brandon, with his hands extended against the car?

A. That's what I observed. He was ordered out of the vehicle and instructed to place his hands at the rear of the vehicle.

Q. All right. And then you approached him and did what?

A. Told him to spread his feet apart. And at that point I swept my foot back left and right to spread his feet apart and retrieved his wallet in the presence of the other officers to confirm I.D.

Q. All right. And at that point you began to ask him questions?

A. Yes, sir, I did.

Q. And you hadn't given him his Miranda warnings?

A. No, sir, I did not. Initially I instructed him as to the reason he was stopped, and upon finishing the reasons why he were stopped, at that point I asked if there was anything in the vehicle pursuant to that before I stopped him.

Q. Did you tell him that you had stopped him -- that he had been stopped because you had probable cause to believe that he had drugs in his possession?

A. That's exactly the way I put it.

Q. At that point you made it clear to Mr. Woods that he was not free to leave and go somewhere.

A. By our actions I'm sure that's the idea he had.

Q. Do you know whether or not Mr. Richmond had ever been inside Mr. Woods' residence?

A. Based upon his statement, he had been to the residence of Mr. Woods, but he had already provided us with a description of the residence, and we later

corroborated that description by having him point it out to us.

Q. Well, did he tell you he had been inside the residence?

A. He had been inside the residence before according

Q. Well, I'm asking you, did he tell you that he had been inside the residence?

A. He advised me that he had been to the residence. Whether that meant inside or out, I don't know. He advised me he had been to the residence. My concern was the vehicle and the delivery of the narcotics at that point, not the residence.

Q. At that point you did not have any information that there were narcotics in that residence.

A. Other than the phone call that was made to the residence, which we took to believe that the order was being placed at the residence. And the surveillance would in fact prove that he came from that residence.

Q. But the informant did not tell you he had been in the residence on this day.

A. No, sir, he did not.

Q. And so you didn't know whether he had any drugs in the residence or not.

A. No, sir, I didn't.

MR. HARRISON: That's all I have. Thank you.

THE COURT: Do you have further questions, Mr. Folmar?

MR. FOLMAR: No, Your Honor, do not.

THE COURT: Thank you, Mr. Kirby.

THE WITNESS: Yes, sir.

MR. FOLMAR: Call Deputy Greenstock.

TONY GREENSTOCK, GOVERNMENT WITNESS,

SWORN DIRECT EXAMINATION

Q. BY MR. FOLMAR: If you would please state your name, sir?

A. Tony Greenstock. Q. How are you employed? A. I'm a

deputy sheriff, Caswell County Sheriff's Department.

Q. What do you do with the Sheriff's Department?

A. I'm a patrol deputy at this time.

Q. Let me direct your attention to January 12, 1998. Do you recall an operation on that morning involving this defendant, James Rufus Woods?

A. Yes, sir, I was.

Q. Tell us what your involvement was with that particular operation.

A. Okay. That morning I was to meet with the detectives Brandon and Kirby at the Sheriff's Department in reference to a briefing on an investigation they had been working. My job as to that investigation was to be dropped off and -- about half a mile south of Mr. Woods' residence and make my way through the wood line and find a good surveillance spot to perform some wood line surveillance.

Q. What were you supposed to look for?

A. I was to wait for the phone call from Detective Kirby to let me know when I might be expecting a suspect vehicle to come out, which would be carrying possibly three ounces of cocaine.

Q. Were you told what kind of vehicles to look for?

A. Yes, I was.

Q. What were some of the cars you were told, if you recall?

A. One was going to be a red Taurus, another would be a red Chevrolet step-side vehicle, and a maroon or burgundy minivan.

Q. And were you given a description of the suspected driver or did you know Mr. Woods?

A. I did not know Mr. Woods. I had not seen him until that day. And the description I was given was a large-frame black male.

Q. Tell us what you did.

A. Okay. I got myself in position in the wood line just across from Mr. Woods' driveway. I been there for

about an hour, hour and a half, deputy -- and received a call from Detective Kirby that a phone call had been placed supposedly ordering up the cocaine. Approximately three to four minutes went by and I noticed a burgundy minivan coming out of the driveway operated by a black male. I immediately radioed Detectives Brandon and Kirby and advised them that the suspect was on the way. And from there I observed him take a right heading north up 119. And then it was a just a couple minutes later I received a call that they had stopped the vehicle and were -- had a suspect in custody.

Q. While you were out there for that hour and a half that morning, basically what time was it that you were in the woods?

A. It's going to be right around 7:30 to 9, right in that area.

Q. Okay. Did you see a lot of traffic-or how would you describe it?

A. A fair amount. Not real busy, no, sir.

Q. What kind of area is that out there?

A. It's a rural area. A lot of, I guess, just open fields and woods.

MR. FOLMAR: No further questions.

THE COURT: Mr. Harrison.

CROSS-EXAMINATION

Q. BY MR. HARRISON: I'm sorry, officer, I didn't catch your name.

A. Tony Greenstock.

Q. Greenstock?

A. Yes, sir.

Q. Mr. Greenstock, you were told that the person that you were to give notice about was a large framed black male; is that correct?

A. Yes, sir.

Q. Did you know how many black males there were at the residence that you were observing?

A. No, sir, I did not.

Q. Could have been more than one, is that possible?

A. I suppose it could be possible.

Q. All right. Now, where were you in connection with the driveway itself? How far were you from the driveway?

A. If you want to count the actual roadway, I was probably going to be approximately 35 foot.

Q. Thirty-five feet?

A. Yes, sir.

Q. And as the van went by you, which side of the van were you on?

A. The van took a right on 119, which would put me on the driver side.

Q. Could you see how tall the driver was?

A. I could not tell. I could just tell in the van he was sitting up there about -- if I had to guess a height at that time, I couldn't.

Q. You couldn't tell whether he was large framed or small

framed?

A. I could tell he was bigger than a small person.

Q. All right. And did you then contact Mr. Brandon; is that correct?

A. Yes, sir.

Q. And tell him what?

A. I advised him that a possible suspect vehicle was en route to his location and to be on the lookout. Also advised him that -- I had advised him of any other traffic that might have been preceding the suspect vehicle, which was none.

Q. Did you tell him that you had observed a large framed black male driving the van?

A. I just advised him that a burgundy van had pulled out of the driveway operated by a black male, possible suspect en route.

MR. HARRISON: That's all. Thank you.

THE COURT: Anything further, Mr. Folmar?

MR. FOLMAR: No, Your Honor.

THE COURT: Thank you, Mr. Greenstock.

MR. FOLMAR: Detective Brandon.

ARNOLD GWYNN BRANDON,, GOVERNMENT WITNESS, SWORN DIRECT EXAMINATION

Q. BY MR. FOLMAR: Would you please state your name and how vehicle to come in sight. Once it came in sight, I fell in behind it..

Q. Tell us what you did.

A. At that point we proceeded north on 119 toward Semora. As' we rounded the curve, coming up on the bridge, the vehicle, once it came into sight of the other deputies, ran off the right shoulder of the road and come back on it and started putting on his brakes heavily. I was notified by Detective Kirby that there was only one place that he may make a move to not come to the checkpoint and that would be a private driveway, at which time he did make an evasive movement to the

driveway. And I initiated the blue lights and ordered the subject out of the vehicle.

Q. Okay. Had you, prior to that, made any attempt to verify whose vehicle this was?

A. I may have. Everything was happening so fast. It would have been standard practice for me to be calling in the tag number. I do not have it documented.

Q. You don't have recollection of that?

A. I don't have any recollection.

Q. Okay. Once you made the stop, then, what did you do next?

A. I got Mr. Woods out of the vehicle. I had my K-9 unit in hand with me. I ordered him out of the vehicle and got him to the back of the van. Once he come out of the vehicle, he had a white napkin in his hand balled up. I made him drop that right there at the driver door. He proceeded on around back. I made him place his hands on the back of the van, at which point Detective Kirby

arrived and secured him. At that point I left and placed the canine back in my vehicle in the back side of the Blazer. As I was coming back, Detective Kirby had had a conversation with him and I heard Mr. Woods advise that the cocaine was in the brown paper bag beside the driver's seat.

Q. Once you heard that, what did you do?

A. At that point I proceeded on around them to the front of the van, looked in through the driver's door and across the seat and down beside the seat, which is a captain seat, and down beside the seat was a brown paper bag.

Q. Beside which seat?

A. Driver's seat.

Q. What did you do when you saw that?

A. I removed the bag, opened it up. It was rolled closed. I opened it up and inside I could see the crack cocaine.

MR. FOLMAR: No further questions, Your Honor.

THE COURT: Mr. Harrison?

CROSS-EXAMINATION

Q. BY MR. HARRISON: Mr. Brandon, what were you told with regard to a description of the individual that you were supposed to stop?

A. We was given numerous vehicles that he possibly may be driving and that it would be a black male and that he would be coming from that driveway.

Q. Did you know how many black males might be at that residence?

A. Yes, sir -- one.

Q. Why? Had you been in the residence that morning?

A. No, sir.

Q. When is the last time you've been in that residence? A. I had not been into it previous

Q. You don't know how --

THE COURT: Wait a minute. Let him finish his answer.

THE WITNESS: I had not been into it prior to that morning. I knew Mr. Woods lived down there and that's

where he would be coming from.

Q. BY MR. HARRISON: All right, sir. Did you know what have you ever been in that residence to determine who else what other black males possibly were there?

A. No, sir.

Q. So you're assuming, then, that there was only one black male at the residence.

A. I was told that James Rufus Woods would be coming from that driveway.

Q. Did you know at the time he left that driveway -- the vehicle left that driveway -- did you know that there could be possibly more than one black male at that residence?

A. There is always that possibility. We was

Q. Did you know James Rufus Woods?

A. Never met him before that day.

Q. All right. So you stopped that vehicle based on the fact that it was a maroon minivan driven by a black male;

isn't that correct?

A. Coming from that driveway.

Q. That's all.

A. And made the evasive move. That's all.

MR. FOLMAR: No redirect.

THE COURT: Anything further?

MR. HARRISON: No, Your Honor.

THE COURT: Thank you, Mr.-Brandon.

MR. FOLMAR: United States rests.

THE COURT: Will there be evidence, Mr. Harrison, on behalf of Mr. Woods?

MR. HARRISON: No thank you, Your Honor,

THE COURT: Okay. Mr. Harrison, I'll be glad to hear from you.

MR. HARRISON: Your Honor, what took place here is a search, rather, a stop and an arrest that requires probable cause. In the officers' own words, this was not a Terry type investigatory detention. This was a

full-scale arrest. That, of course, brings into play the entire panoply of Fourth

THE COURT: Mr. Harrison, with that, if you have anything you wish to be heard on, I'll hear you.

MR. HARRISON: Brevity I think is the sole discretion at this moment, sir.

THE COURT: All right, sir. I will find that in this case, then, that was an in-custody proceeding under those circumstances; and under those specific circumstances, I find that that information should not come before the jury.

MR. FOLMAR: I would only ask, Your Honor, to step out briefly and make sure the witnesses understand that ruling and that there's no question about it. Other than that, I would be ready to proceed.

THE COURT: That will be fine. So we'll go ahead and get the jury in here and go till about 3:30 for a break then. You may do that right now.

(Conclusion of the motion to suppress).